

# Black Lives Matter

Samuel H. Pillsbury\*

JILL LEOVY, GHETTOSIDE: A TRUE STORY OF MURDER IN AMERICA (2015).

“*Please* write about it. *Please!*”

A mother pleading with a reporter to write about her son’s murder (P. 37.)

A great story teller sweeps you away. The story begins and all you want to do is ride the wave of words to its end. Jill Leovy begins her book, *Ghettoside*, about the police investigation of homicide in contemporary South Los Angeles, about the agony of homicide’s survivors, and about race and violence in America, with the following scene:

A Los Angeles Police Department (LAPD) homicide detective returns the shoes of a fifteen-year-old boy, murdered a year before, to the boy’s mother. A six-foot-four, blonde haired, politically conservative, no-nonsense cop, John Skaggs hands the open shoe box to Barbara Pritchett, a black woman, at the entrance to her South Central home. The shoes had been worn by her son, 15-year-old Dovon Harris, when he died.

[Pritchett] stared at the shoes, choked and speechless. Skaggs’s eyes caught her stricken face as he walked past her [into the house]. “Hi, Barbara,” he said. “Having a bad day today?”

This was Skaggs’s way, disdaining preliminaries, getting right to the point . . . .

Now, having deposited the shoes in Barbara Pritchett’s hands—and having received no answer to his question—he came to a halt in the middle of the living room carpet. Pritchett remained silent, head bowed, eyes fixed on the contents of the shoebox.

She was forty-two, in poor health. She had recently been diagnosed with diabetes, and her doctor had urged her to get out and walk more. But her

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son had been shot to death a few blocks away, and Pritchett was too frightened to venture out . . . .

With great care, Pritchett perched the shoebox on the arm of a vinyl armchair by the door and slowly lifted one shoe. It was worn, black, dusted with red Watts dirt. It was not quite big enough to be a man's shoe, not small enough to be a child's. She leaned against the wall, pressed the open top of the shoe against her mouth and nose, and inhaled its scent with a long, deep breath. Then she closed her eyes and wept.

Skaggs stood back. Pritchett's knees gave out. Skaggs watched her slide down the wall in slow motion, her face still pressed into the shoe. She landed with a thump on the green carpet. . . .

They made a strange picture, the two of them: the tall white cop and the weeping black woman. . . .

Despite their differences, they were kin of a sort—members of a small circle of Americans whose lives, in different ways, had been molded by a bizarre phenomenon: a plague of murders among black men.

Homicide had ravaged the country's black population for a century or more. But it was at best a curiosity to the mainstream. The raw agony it visited on thousands of ordinary people was mostly invisible. The consequences were only superficially discussed, the costs seldom tallied. (Pp. 3–5.)

Introduced in this short passage are the main stories that Leovy has to tell: (1) of a murder—actually several murders—and their subsequent police investigations; (2) of the devastating grief suffered by homicide's survivors; and (3) of race, violence, and criminal justice in the United States: specifically how the police failure to solve most black-on-black homicides and shootings contributes to violence in the black community.

The book centers on the murder of Bryant Tennelle, an eighteen-year-old African American shot to death on a Los Angeles street by a seventeen-year-old African American, apparently to send a gang message. Tennelle was not a gang member, though he was wearing a Houston Astros baseball cap that was associated with a local gang. Much of the book focuses on the LAPD's investigation of his murder, especially as led by Detective John Skaggs. Interwoven throughout is an account of the human tragedy of homicide: the agony suffered by survivors.

Leovy is more than a storyteller here, however. She has a policy argument to make—that inadequate official response to black-on-black violence throughout American history, and continuing to this day, has been a key contributor to the disproportionate—greatly disproportionate—rates of homicide in the black community. From start to finish, Leovy hammers on the relationship between the

quality of homicide investigations and the value of black lives taken. She argues that to the public and police alike, some murders matter more—much more—than do others. The killing of young black males by other black males—the most common of all homicides in much of America—matter the least. She maintains that the failure to vigorously investigate all such crimes, the willingness to be satisfied with ostensible effort and not results, creates a sense of impunity for perpetrators and leads directly to retaliatory killings. An isolated, threatened community, without reliable access to legal justice, will inevitably resort to its own form of self-help justice, meaning violence, Leovy argues.

A work of high quality longform journalism, *Ghettoside* throws a revealing light on contemporary policing, revealing much that is not widely understood, such as serious tensions (at least in Los Angeles) between patrol officers and detectives about basic police priorities, about the challenges and possibilities of securing the cooperation of witnesses vulnerable to retaliation, and the qualities of successful homicide investigators. Readers of this journal, however, may be most interested in Leovy's policy argument: that the key to ending black-on-black violence is adequate police investigation of past crimes. In this review essay, in addition to assessing the book on its own terms, I consider the challenge that it presents to all concerned with race and policing practices in the United States.

### I. METHOD

*Ghettoside* is the product of research across eleven years by Leovy, a *Los Angeles Times* reporter. Twice during that span, Leovy embedded herself with homicide detectives in the city's Seventy-seventh Street station in South Los Angeles. This station handles homicides south of the Interstate 10 freeway, the center of the black community in Los Angeles (a geographic fact that dates back to segregation policies in the city from the 1940s and 50s). During this time, in addition to reporting on police for the *Times*, Leovy created the paper's Homicide Report, which aimed to report on every homicide in the county on the paper's website.

The book is the product of old-fashioned, out-in-the-world reporting. This is not a desk effort: information generated mostly by phone or e-mail or paper sources. Leovy reports face-to-face conversations and observations. This provides striking details about police work, victims, victim families, and even perpetrators. She pays special attention to the family survivors of homicide. In her Author's Note at the book's end, Leovy writes: "Mostly, I've relied on what I have myself seen or heard directly from those who are close to homicide. I have made deliberate efforts to listen to the bereaved—to seek out the parents, siblings, spouses, and children of black homicide victims, whose viewpoints are underrepresented in our national debates over criminal justice. I tried to discipline myself to find people in great pain, from a sense that the sad and disturbing nature of the subject matter is one of the reasons it is avoided and underemphasized." (P. 323.) Later in her Acknowledgements, Leovy writes: "Apologies to the hundreds

whose loved ones' names do not appear here; you're the reason for this book." (P. 326.)

Leovy writes with passion, grace, and discipline, a rare but powerful combination. She has the confidence to write less here than she could; she has distilled her material into the essential facts and observations that will carry the truth that she sees. She writes with a passion for justice. Like many great journalists, she is a moralist at heart. The book conveys her anger at the indifference of government, media, and the public to the harms and wrongs of criminal homicide in the urban black community.

The author's commitments, personal and moral, are evident in the names she adopts for violence in the black community. Homicides among African-Americans in Los Angeles are the Plague, taken from the Albert Camus novel of the same name. She also refers to The Monster, a name taken from Brent Josephson, a Seventy-seventh Street detective to serve as "a shorthand for the whole mess—not just the pileup of homicides among a small group of people, mostly black, and the unseen savagery of those crimes, but also the indifference with which the world seemed to view them." (Pp. 37–38.)

## II. MURDER'S AWFUL TOLL: FOCUSING ON THE AFTER, NOT THE DRAMA

*Ghettoside* is in important ways counter-cultural. In a culture that loves depictions of violence for their entertainment value, for the drama of extreme conflicts that moments of violence provide, Leovy focuses on the lived reality of homicide; she tells of homicides after.

Leovy notes that few homicides involving minority victims are covered by the media. When they are, the story is usually about gangs and the frightening (also exciting) drama of urban violence. They rarely include any effort to depict the real people involved or its human aftermath. She writes: "Somehow, mainstream America . . . managed to make a fetish of South Central murders yet still ignore them. The principal aspect of the plague—agony—was consistently underrated." (P. 37.)

She quotes a Los Angeles coroner's investigator who states she is not bothered by homicide's gore but is affected by its emotional toll. "It's the grief," she says. (P. 87.) For family survivors of homicide, the worst pain comes long after the homicide itself. "It's after. It's after. It's after," says Barbara Pritchett (Pp. 35–36.) Leovy follows the travails of Pritchett, mother of Dovon, and Wally and Yadira Tennelle, the parents of Bryant. She writes of their pain that the law cannot touch. Wally Tennelle, though a homicide detective himself, felt no desire for pay back against the killer of his son. "Instead there was only pain. Inescapable pain," Leovy writes. (P. 131.)

Leovy shows how the success of a homicide investigation can depend on the willingness of a detective to stand with family survivors in their pain. The officers that Leovy depicts, Detective Skaggs in particular, do not have the warm and sympathetic mien that one might expect of those who care for the distraught, but

the best investigators respect the pain and never turn away from it. As in the book's first scene, detectives keep company with surviving family members in their agony. Leovy says that homicide detectives, at least some of them, develop a spiritual understanding of the work. They learn humility in the face of death. (P. 42.)

Repeatedly, LAPD officers are verbally attacked by black residents in Los Angeles: accused of being racist, not caring enough about black victims to do their jobs. The best officers ignore it. At one point Detective Skaggs picks up a cold case—a longtime unsolved homicide—and when he goes to talk to Glory Massey, the wife of the victim, she yells at him about the police's failure to take the case seriously. "He's just another fuckin' black man now, right?" Massey screamed at Skaggs. *'Just another fuckin' black man down!'*" (P. 46.) Skaggs stands his ground and waits until Massey stops yelling, to ask her questions about the case. Then he keeps coming back, always asking when he does about her children. They form a working relationship. Later, Skaggs does not even remember Massey's original verbal assault. (P. 47.) "It was part of the job—an enduring theme of ghettoside work—and he shrugged it off. They always thought he didn't care." (P. 47.)

Toward the end of the book, Leovy describes the development of a new homicide detective, Nathan Kouri who, though lacking the social skills and confidence of Skaggs, "was open and sensitive enough to take in the misery of the people involved in his cases. He allowed their pain and terror to rework his understanding of the work he did." (P. 289.) Leovy shows how this is often key to winning the trust of witnesses and families. At one point, Barbara Pritchett pleads with other residents of a housing project where a murder has just occurred not to retaliate, saying, "[g]ive the cops a chance." She invokes Detective Kouri's name, to assure them that, this time at least, justice would be done under the law. (P. 291.)

At the core of the detectives' work, what keeps them going is their commitment to the victim. Leovy writes of the detectives' philosophy: "The murdered were inviolate. They all deserved the same justice." (P. 33.)

### III. CRIME AND PUNISHMENT: THE MURDER OF BRYANT TENNELLE

*Ghettoside* is also a true crime book, with a powerful narrative about two murders, their investigations, and resolutions. The primary focus is on the Tennelle murder. The first to respond to the call of an "ambulance shooting" is a Latino police officer who Leovy describes as struggling to understand and deal with community values and attitudes toward police in South Los Angeles. (Pp. 16–18.)

Because Bryant Tennelle's father is a homicide detective, there is initial pressure to transfer the investigation to Robbery Homicide Division, the LAPD's elite investigative unit that handles the most challenging and high profile cases (see, O.J. Simpson). In the end, with Detective Tennelle's agreement, the case

stays in the Seventy-seventh, on the notion that it is best for the investigators to be close to the community where it occurred. (Pp. 120–21.)

Despite being a high priority case, the initial investigation dead ends. (Pp. 131–51.) Detective Skaggs is then asked to partner with the lead detective on the case in hopes of making new progress. (P. 151.) Skaggs immediately shakes things up. He does not like the way that the case has been run to date and insists on doing things his own way. (Pp. 151–54.) This leads to conflict with his partner and a meeting with their supervisor where Skaggs demands to either be given sole charge of the case or be taken off it. (Pp. 159–61.) Skaggs is not an easy going guy. Because results are so important in the case, and because Skaggs has a way of getting them, the supervisor takes the highly unusual step of removing the original lead detective and giving the case to Skaggs. (Pp. 120–21.) At least in Leovy's telling, this makes a difference—maybe even all the difference.

This is but one example of many decision points in the case where investigators go beyond the usual because of their commitment to solving the murder of the son of a fellow detective. Consider Skaggs's best lead in the case, which is the gun used in the shooting, and how that lead was developed.

Bullet fragments recovered from the victim indicated that the gun used to kill Bryant Tennelle was a 22-caliber revolver. Matching bullets to guns happens easily and quickly on television, but in real life not so much, even in a police department as well-resourced as the LAPD, which has its own forensic laboratory. It turns out that the LAPD lab uses a digital imaging system called the National Integrated Ballistic Information Network database (NIBIN) for bullet and cartridge analysis. (P. 143.) It is much quicker than the previous technique of individual microscopic comparison and does a decent job of matching spent cartridges with semiautomatic weapons. It does not work well with harder-to-analyze revolvers and bullets, however. In fact, in the LAPD lab, the new system had never matched a bullet or bullet fragment to a revolver. (P. 143.) Leovy critiques: "Here again, the criminal justice system seemed to be doing its job when it wasn't. The NIBIN system appeared progressive and technologically advanced. But in this important area—about one-third of the LAPD's seized firearms were revolvers—it was just going through the motions." (Pp. 143–144.)

The forensics part of the Tennelle case might have ended here, with perhaps fatal results for the investigation, but the head of the crime lab, a civilian, Doreen Hudson, decided that in this case NIBIN analysis was not good enough. She resolved that they would go back to the old individualized analysis procedures that could match bullets with revolvers. The lab began to assemble a database of bullets test fired from seized revolvers in the hopes that they would find a match with the Tennelle fragments. (Pp. 143–44.) Of course, for this to happen, (1) the gun used by the shooter would have to be seized by the LAPD and (2) there would have to be enough information obtainable from both the Tennelle fragments and the gun to make a match. Amazingly, this is just what happened. (Pp. 145–46.)

This brings us to the story of how the murder weapon was seized and the value to law enforcement of pursuing even minor offenses. A veteran patrol

officer working in a gang unit, Francis Coughlin, approaches a group of young black men drinking at a housing project where a fatal shooting had recently occurred. The men take off running and Coughlin chases. Going after a man in a wheelchair, Coughlin sees him toss aside a bag of marijuana, which gives him cause for an arrest, which gives him cause to search the man's person and surroundings—a search which produces an old revolver that is later matched to the Tennelle fragments through the lab's low-tech, time consuming process. (Pp. 140–42.)

By the time Skaggs took lead on the case, the man in the wheelchair had been interviewed in jail on three separate occasions by investigators. Police knew he was not the shooter; they wanted to know where he had gotten the gun. But the man would not say. The jail interview conducted by Skaggs and his new partner on the case, Robert Gordon, seemed as if it would produce nothing as well. The man gave a vague description of the seller, but the detectives believed he was lying. Yet, how to convince him to identify the seller, when that might put his own life at risk? As the interview was winding down, the three had a more personal, casual exchange about jail and the man's family. Then, as the detectives prepared to leave, Detective Gordon tried one last time, asking if there was any way the man could help them. To their surprise, the man changed his account. He said that the guy who had sold him the gun was called No Brains. (P. 166.)

This street name proved to be the key thread that, pulled steadily and hard, unraveled the case. It led detectives to focus on a different gang than was previously suspected in the shooting and this triggered Skaggs' memory of earlier vague accounts given by witnesses about a fight involving members of this gang. This led detectives to a teenager recently released from jail on unrelated charges who provided a second name: Baby Man. (P. 170.) Soon, though not without critical effort at each stage (including correcting the name under which a suspect was held in county jail), the detectives identify No Brains as Devin Davis and Baby Man as Derrick Starks. (Pp. 172, 174.) Through police records of a previous car accident case, Starks is tied to a girl, who after working through false names, police identify as Jessica Midkiff. Midkiff proves to be the star witness. She was with Davis and Starks when the shooting happened and tells police what occurred. (Pp. 176–88.) An interrogation of Devin Davis produces a confession, eventually. (Pp. 189–209.) Starks, the older and more experienced of the suspects, is questioned by detectives but denies involvement. (Pp. 209–12.)

As best as the police could determine, Bryant Tennelle, who had no gang affiliation, was shot just because he was a young black man on the streets of a neighborhood associated with a particular black gang. Starks had felt disrespected by this gang in a previous conflict and, on driving into the gang's neighborhood with Davis and Midkiff, Starks directed Davis to shoot Tennelle to send a payback message. The teenage Davis apparently did as told because of a desperate need to fit in with Starks and other gang members. "I was in the car. . . I was with the burner [gun], all right. I got out of the car . . . and I just started doing it, I don't know why! I was scared! . . . I didn't want nobody thinking of me as no bitch or

nothin' . . . I just wanted to have friends! That's all I wanted. I didn't think you had to do that!" (P. 204.)

When the investigation was complete, Skaggs called the victim's father, Detective Wally Tennelle to tell him. "Then, as Skaggs had done so many times before, he fell silent and waited, listening as Tennelle wept at the other end of the line." (P. 213.)

#### IV. PRIVILEGING THE PERSONAL: THE POSSIBILITIES AND LIMITS OF EMBEDDED JOURNALISM

This is a review of a work of journalism appearing in a publication for legal academics (mostly), which raises the question of what journalism can do for the legal academy.<sup>1</sup> Here, we have a book based on neither legal texts nor social science studies. Leovy tells stories. The book also depends on a journalistic method—embedding with sources—that is virtually guaranteed to strongly shape the writer's perspective. Despite these reasons for skepticism, though, Leovy's highly personal and narrative-centered account is a valuable one for both law teachers and writers. It reveals dimensions of policing that otherwise would remain unseen or unappreciated. The latter is especially important. In criminal justice, knowledge matters, but emotion drives change. And yet there are costs to such a personal approach.

*Ghettoside* comes out of relationships that the author formed with particular LAPD homicide detectives and supervisors. Leovy's allegiances are clearly revealed in her narrative choices and in her argument. Both track the work and beliefs of the main homicide detectives profiled.

In the investigations of the murders of Dovon Harris and Bryant Tennelle, the main cases described in the book, the LAPD homicide detectives do it right. They identify suspects, build cases, and supply prosecutors with evidence that leads to convictions. Throughout *Ghettoside*, most of the focus is on homicide detectives and supervisors that the author admires. Indeed, it is not too strong a word to call the main police protagonists here heroes. This is not because of their extraordinary courage or personal skills, but because of their commitment to a cause that neither the public nor their department fully embraces. The many serious faults with the LAPD that Leovy documents—and there are many and they are serious—are presented with less detail than the work of the detectives she admires. Leovy takes sides.

The book's narrow detective focus means that it leaves out important aspects of criminal justice politics and policy in Los Angeles. There is almost nothing here about city mayors and council members, police chiefs, the city charter,

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<sup>1</sup> See also Samuel H. Pillsbury, *Learning from Journalism*, 3 OHIO ST. J. CRIM. L. 543 (2006) (reviewing STEVE BOGIRA, *COURTROOM 302: A YEAR BEHIND THE SCENES IN AN AMERICAN COURTHOUSE* (2005)).



leading civil rights lawyers, reformers and other advocates, or state and federal officials. The political history of the city and its department has been a rich and tumultuous one over the last thirty years, but that story is barely mentioned here. Which is fine. That is not what this book is about, and there are other sources for those stories.<sup>2</sup>

A more serious omission concerns punishment. Through minimum mandatory penalties, sentence enhancements for gang involvement and firearm use, and tougher parole policies, length of incarceration for murder greatly increased in California in the late 20th century. This has been especially true for the gang and street killings likely to have minority victims.<sup>3</sup> Leovy touches on this development (Pp. 157–58.), but she does not consider it in any depth or its relation to her larger argument that the public and state do not sufficiently value the lives of black victims. In many instances, when the killers of African-American victims are convicted today, their sentences are significantly higher than before. Does this indicate a higher value placed on black lives? Or should this be considered just a variation on a historical theme of race prejudice, as the defendants in most of these cases are black as well? Homicide tends to be a very intra-group offense. The point is that punishment policy is an important part of the contemporary homicide story and needs more attention than it is given here, even if it is just to distinguish sentencing issues from policing issues. I will return to punishment questions later when I consider some of the larger implications of Leovy's argument.

With its tales of homicide detectives working in a poor, urban, predominantly black area, and reliance on close observation of both police detectives and community by a newspaper reporter assigned the police beat, *Ghettoside* naturally raises comparisons with David Simon's classic work about Baltimore murder investigations in the late 1980s, *Homicide*.<sup>4</sup> And so, it is worth a moment to consider the two books side by side.

Simon spent a year embedded with three sets of detectives in Baltimore and produced a hefty (600 plus pages) tome on the daily workings of a busy homicide unit that was, for me and many other readers, a revelation. Here was the lived reality of detective work, so different in many ways from what was depicted on television and in crime novels. Here was the politics—the red ball cases that mattered more than any others—the rough comradery between detectives, the drinking, long hours and petty bureaucracy of police work, and the cruelty, stupidity, and tragedy of lives gone wrong.

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<sup>2</sup> See, e.g., JOE DOMANICK, *BLUE: THE LAPD AND THE BATTLE TO REDEEM AMERICAN POLICING* (2015); LOU CANNON, *OFFICIAL NEGLIGENCE: HOW RODNEY KING AND THE RIOTS CHANGED LOS ANGELES AND THE LAPD* (1999).

<sup>3</sup> For crimes committed when they were respectively seventeen and twenty-five years of age, Devin Davis and Derrick Starks were both sentenced to life without chance of parole. (P. 308.)

<sup>4</sup> DAVID SIMON, *HOMICIDE: A YEAR ON THE KILLING STREETS* (1991). The book inspired the ABC television series titled *Homicide*, and provided material later used by the author in the HBO television series, *The Wire*.

What is interesting, looking back at Simon's book, is to see how different it is from Leovy's book. Not better or worse necessarily, but different. Simon's book details more cases and more detectives. He is primarily interested in the community of investigators. His writing remains vigorous and powerful, but now appears somewhat mannered, with its use of the present tense and determinedly dark atmospherics. Simon clearly sought to reproduce the voice of male policing. As a result, it is very much a man's book, with its heart often disguised in humor and stark realism. In *Homicide*, while race issues are very much present, they are not the subject. For example, early on, Simon mentions the term "misdemeanor homicide," signaling a Baltimore homicide with low value victims, but this is an aside, not an invitation to outrage.<sup>5</sup>

By contrast, Leovy is deeply engaged with race as a justice issue, a critical source of dispute, misunderstanding, rage and tragedy. Another contrast is Leovy's connection to the experience of family members of homicide victims, of the survivors. She never goes for the dark humor, the cynicism, or the rush to retribution characteristic of so much insider writing about criminal justice. Her approach permits an emotional and spiritual depth, a grace and beauty in tragedy, which makes this work a singular contribution to the large literature about crime in America.

Finally, a last word about embedded journalism. To provide the kind of account that Leovy has here—and that Simon did a generation earlier—journalists must have special access to the police. This requires not only the approval of police commanders, which is rarely given, but also the trust of some very suspicious people: police detectives. Inevitably, unavoidably, the journalist becomes part of the police world for a time and allies with the officers in some respects. As Simon says in his afterword to the paperback edition of *Homicide*, with reference to the detectives he wrote about: "I admit it. I love those guys."<sup>6</sup> I imagine that Leovy would say something similar about the detectives to whom she devotes the most attention, though I doubt she would use the same words.

Now it is clearly not a standard tenet of good journalism that one love one's sources. But neither is it a disqualifier, at least in this kind of longform journalism. What Simon did years ago, and what Leovy has done today, simply is not possible without close personal relationships with the police officers and others portrayed. This limits the author's perspective. But there are some things that can only be seen properly close-up.

Put another way, in a world ever more enamored with numbers as a means of comprehending the human condition, Leovy has put individuals and their stories first. With homicide that seems particularly appropriate. Homicide statistics cannot carry the emotional weight that a single story of death and survival can. One of the great gifts of *Ghettoside* is that the reader senses the toll of violent

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<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.* at 639.

death on people the reader has never met and likely never will. In the end, Leovy's privileging of the personal is a virtue, not a vice.

#### V. THE POLICY ARGUMENT: IMPUNITY DRIVES VIOLENCE

This is a book about a very simple idea: where the criminal justice system fails to respond vigorously to injury and death, homicide becomes endemic. (P. 8.)

Impunity is a stencil of law; it outlines a shadow system. . . . For blacks, this system meant being killable. (P. 155.)

Few experts [have] examined what was evident every day of John Skaggs's working life: that the state's inability to catch and punish even a bare majority of murderers in black enclaves such as Watts was itself a root cause of the violence, and that this was a terrible problem—perhaps the most terrible thing in contemporary American life. The system's failure to catch killers effectively made black lives cheap. (Pp. 7–8.)

In these quotations is the essence of Leovy's policy argument. It has two parts: (1) that the failure of law enforcement to solve most black-on-black violence leads directly to persistent high rates of violence in the black community, with young black men being the primary victims; and (2) that with more effort many more black-on-black homicides could be solved by police. I will call the first of these the causation argument and the second the feasibility argument.

Although similar questions about the effects of race on homicide investigations have been addressed in recent years by both social scientists and journalists,<sup>7</sup> I will largely confine myself here to Leovy's contribution to the discussion.

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<sup>7</sup> For an overview of major social science studies on factors influencing the successful investigation of homicides, including race, see Marc Riedel, *Homicide Arrest Clearances: A Review of the Literature*, 2 SOC. COMPASS 1145 (2008). For recent studies, see Kenneth J. Litwin & Yili Xu, *The Dynamic Nature of Homicide Clearances: A Multilevel Model Comparison of Three Time Periods*, 11 HOMICIDE STUD. 94 (2007); Catherine Lee, *The Value of Life in Death: Multiple Regression and Event History Analyses of Homicide Clearance in Los Angeles County*, 33 J. CRIM. JUST. 527 (2005); Janice L. Puckett & Richard J. Lundman, *Factors Affecting Homicide Clearances: Multivariate Analysis of a More Complete Conceptual Framework*, 40 J. RES. CRIME & DELINQ. 171 (2003); CHARLES WELLFORD & JAMES CRONIN, JUSTICE RESEARCH & STATISTICS ASS'N, AN ANALYSIS OF VARIABLES AFFECTING THE CLEARANCE OF HOMICIDES: A MULTISTATE STUDY (1999), [http://jrta.org/pubs/reports/Clearance\\_of\\_Homicide.html](http://jrta.org/pubs/reports/Clearance_of_Homicide.html).

There have also been a number of media studies of homicide clearance rates. For a recent example, see Sarah Ryley, Barry Paddock, Rocco Parascandola & Rich Schapiro, *Tale of Two Cities: Even as Murders Hit Record Low in NYC, a Mountain of Cases Languishes in Outer Boroughs as Cops Focus More Manpower on Manhattan Cases*, N.Y. DAILY NEWS (Jan. 5, 2014, 2:00 AM),

### A. The Causation Argument

That law enforcement in America, including in Los Angeles, has long failed to solve a high percentage of black-on-black homicides is clear. Leovy notes that clearance rates for black-on-black homicide have been low both in times of increased and decreased violence.<sup>8</sup> She cites a *Los Angeles Times* study of 9,400 cases in Los Angeles County in the early 1990s (near the height of the homicide boom locally) showing that suspects were convicted of a homicide offense in about a third of cases. (P. 48.) LAPD figures indicate that from 1994 to 2006, a suspect was arrested in 38% of the 2,677 homicides of black males in the city of Los Angeles. (Pp. 48–49.) Shootings that do not produce death, what one detective quoted here calls “almocides,” have a much lower rate for arrest and conviction. (P. 49.)

Certainly, from a social science perspective, Leovy does not provide sufficient support for her argument that low clearance rates for black-on-black homicide in Los Angeles are due to race discrimination—a devaluing of black lives by police. She relies significantly on historical and contemporary disparities with respect to race of the victim in conviction and punishment to support her view. (P. 48.) Low clearance rates for black-on-black homicide could also stem from nonracial factors, however. Whether homicides involve the commission of other felonies, whether they occur in the home or elsewhere, and whether they involve related parties or apparent strangers can have major effects on solvability. This is aside from the question, to be considered later, of whether problems in

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<http://www.nydailynews.com/new-york/nyc-crime/forgotten-record-murder-rate-cases-unsolved-article-1.1566572> [hereinafter *Tale of Two Cities*].

<sup>8</sup> Leovy is not always as clear as she might be about what she means by a clearance rate. The focus of most social science researchers is the arrest clearance rate—how many reported homicides are cleared by the arrest of a suspect. This number is obtained by dividing the number of homicide arrests in a jurisdiction in a given year by the total number of homicides reported and then multiplying that number by 100. See Riedel, *supra* note 7, at 1145. This rate should be distinguished from the overall clearance rate used by the FBI’s Uniform Crime Reporting Program (UCR), which also includes clearances by what are called *exceptional means*. Under the UCR guidelines, a case may be cleared by exceptional means when police have identified a suspect and developed a case against him, but cannot prosecute for reasons beyond the agency’s control, such as the suspect’s death. See *id.* at 1149. On the significance of the difference between arrest and exceptional means clearances, see John P. Jarvis & Wendy C. Regoeczi, *Homicide Clearances: An Analysis of Arrest Versus Exceptional Outcomes*, 13 HOMICIDE STUD. 174 (2009).

An important background fact is that homicide clearance rates in the U.S. have significantly declined nationwide since the 1960s. Riedel, *supra* note 7, at 1146. U.S. homicide clearance rates today are also significantly lower than those for many other developed countries. *Id.* The decline in U.S. rates may be due, at least in part, to a decline in homicides between related persons, which tend to be easier to solve. See *id.* at 1160; JAMES ALAN FOX & MARIANNE W. ZAWITZ, BUREAU OF JUSTICE STATISTICS, HOMICIDE TRENDS IN THE UNITED STATES (2014), <http://bjs.gov/content/pub/pdf/htius.pdf> (on decline in homicide between intimates).

investigation of black homicides should be laid primarily on police or on lack of community cooperation with police.

Personally, I suspect that Leovy is right, that race, combined with socioeconomic status, does help explain low clearance rates for black homicides. It fits the anecdotal evidence of different resource deployment and media attention to homicides according to victim status. It fits a larger, well documented pattern in American criminal justice of bias according to victim race.<sup>9</sup> Still, the contemporary causal tale is much more complex than suggested here with a need for both more rigorous theory and a great deal more data to persuade a skeptic. Which is a less damning judgment than it may appear; from start to finish, this is primarily a work of journalism, not social science.

Then there is the question of the connection between police investigation and subsequent violence. Is Leovy right that the police failure to investigate black victim homicides sufficiently leads to black-on-black violence? She provides persuasive, albeit anecdotal evidence, that many African Americans in South Los Angeles view the police as essentially indifferent to such crimes and that this contributes to an ethos of violent self-help and a sense of impunity for those inclined to violence. Again and again, friends and family members of a victim indicate a plan to retaliate against the one who “everyone knows” is responsible. (Pp. 40, 46–47, 84–86, 291.) She also cites historical data to support her argument.<sup>10</sup>

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<sup>9</sup> The best evidence comes from differences in applications of the death penalty according to victim status. See DAVID C. BALDUS, GEORGE G. WOODWORTH & CHARLES A. PULASKI, JR., *EQUAL JUSTICE AND THE DEATH PENALTY: A LEGAL AND EMPIRICAL ANALYSIS* (1990).

Contemporary studies of homicide clearance rates are not in agreement on whether minority race or ethnicity is an independent negative factor. Riedel cites nine studies finding that it is and four studies that found no effect from victim race or ethnicity. Riedel, *supra* note 7, at 1155. Although there are clear differences in clearance rates according to race of victim in most studies, with higher clearances for white victims (*see id.* at 1154–55.), researchers differ on whether this should be attributed to devaluation of minority victims by police or by less cooperation with police by African American communities. For an argument supporting police devaluation of minority victims, see Lee, *supra* note 7. See also Litwin & Xu, *supra* note 7, at 11 (noting the significance of victim minority status in contemporary Chicago). For studies emphasizing community suspicion of and hostility to police as the explanation, see Timothy G. Keel, John P. Jarvis & Yvonne E. Muirhead, *An Exploratory Analysis of Factors Affecting Homicide Investigations: Examining the Dynamics of Murder Clearance Rates*, 13 *HOMICIDE STUD.* 50, 62–63 (2009); Puckett & Lundman, *supra* note 7, at 183–85. For more on this controversy, see *infra* note 10.

<sup>10</sup> For an example from a place far away in both time and distance, consider homicide in Rome in July of 1492. More than 200 people were killed that month in the city, an extraordinary number for such a short time, even in a much more violent era than the present. A likely cause? It was a period of interregnum—between the death of one pope and the election of another. Traditionally, the new pope, once installed, would declare clemency for all crimes committed during the interregnum. This provided a large incentive for would-be killers to commit their crimes during this window of legal opportunity. See DARIO FO, *THE POPE’S DAUGHTER* 20–22 (Antony Shugaar trans., Europa Editions 2015) (2014). On historical changes in violence rates and an explanation for their decline, see STEVEN PINKER, *THE BETTER ANGELS OF OUR NATURE: WHY VIOLENCE HAS DECLINED* (2011).

Once more, from a social science perspective, the data and the theoretical construct fall short of being fully persuasive. Exactly what does it mean that investigative failures cause community violence? How can that be distinguished from the argument, to be taken up shortly, that community values and dysfunction are primarily responsible for police shortcomings? And sometimes Leovy just makes broad generalizations that go far beyond even her own anecdotal evidence. For example: “Fundamentally gangs are a consequence of lawlessness, not a cause.” (P. 80.) While this could be true, the statement needs a great deal more support than is offered here, where it appears as a stand-alone proposition.

None of this, however, makes Leovy’s causal argument implausible, particularly if we revise it slightly to argue in terms of contribution rather than singular cause. Of course, a failure to solve murder cases matters to those who cared for the victim, and if there is even an appearance of racial disvalue in that failure, it will lead to a disregard for police and the law generally, which will remove important restraints on the use of violence to settle disputes. At one point, Leovy offers a kind of thought experiment, which to me expresses the essential, common sense intuition on which her causal argument is based:

Take a bunch of teenage boys from the whitest, safest suburb in America and plunk them down in a place where their friends are murdered and they are constantly attacked and threatened. Signal that no one cares, and fail to solve murders. Limit their options for escape. Then see what happens. (P. 253.)

#### *B. The Feasibility Argument*

Even if we buy Leovy’s causal argument, her larger argument fails unless we also agree that police could do much better in investigating black-on-black homicides. I suspect that the primary response of law enforcement in Los Angeles and elsewhere to Leovy’s critique is that police and prosecutors do the best that they can to bring all murderers to justice, but that some cases are much harder to solve than others are. Cases arising in certain parts of the city, such as the black community in South Los Angeles, are unfortunately among the hardest to bring to court and successfully prosecute. Why? Very simply, a lack of cooperation by witnesses and even victims. As Exhibit One, defenders of the LAPD might point to an incident noted here, in which a gang member dying of gunshot wounds is asked by a police officer for information about the shooter. His response, which actually constitutes his last words, is: “Fuck you.” (P. 66.) How is the lack of results in a homicide investigation the fault of investigating officers if those who have information about the killer refuse to share it? If, as is commonly alleged, “everyone knows” in the black community who is responsible for killing, why does it count as a failure of policing if no one will tell what they know to investigators?

In assessing this defense, we need to distinguish two different kinds of normative questions. First, there is a straight policing question: could this police department do significantly better in investigating certain homicides than it presently does? Leovy says yes and I agree. Lurking in the background is a related, but nevertheless distinct, question about group blame. Who is really to blame here: the black community or the police? This is a hugely divisive, though I think ultimately misguided, question whose discussion I will take up later.

Speaking strictly in terms of government policy, *Ghettoside* is first and foremost a rebuttal to the notion that the City of Los Angeles does the “best it can” when it comes to black-on-black homicides. It is a question of priorities. Black-on-black homicides do matter to police and governmental officials. But how much?

To determine an institution’s priorities, we might look at how it distributes material resources, how it recognizes achievement, and what it sees as its primary mission. According to these criteria, the investigation of black-on-black homicide by the LAPD is not its highest priority. Not even close.

Let’s begin with the question of material resources for homicide detectives in the Seventy-seventh Street station. Leovy writes: “It wasn’t the horror that burned out ghettoside detectives. It was the frustration.” (P. 238.) Yes, Leovy writes about the LAPD during a time that included serious budget cuts, when economic recession and the strictures of Proposition 13 in California hurt almost all units of government in the state. But still, we are talking about the investigation of murder in a department with (compared to many other jurisdictions) extraordinary resources, in one of the richest cities in the world. During the years covered in this book, prosecutors began to ask detectives for audio recordings of suspect interviews, but the Seventy-seventh Street station interview room—shared by homicide detectives with all other police officers in the station—had no recording equipment, audio or video. Nor were individual tape recorders issued to detectives or cell phones or photo or video equipment. (P. 215.) There were never even enough chairs or cars for detectives to use. Office supplies were rationed to the point that detectives had to make trips to Office Depot to buy paper and pens with their own money. (P. 68.) When homicide detectives finally got new office space in the Seventy-seventh Street station, the one-way mirror in their interrogation room was installed backwards. Suspects could see out but police could not see in. (P. 215.)

For detectives in the Seventy-seventh Street station, the worst came when in response to a budget cut, headquarters slashed overtime pay for homicide detectives. (P. 214.) This did not just mean no compensation for overtime hours worked (which are common following a homicide), it meant a prohibition on working overtime. Because detectives are classified as hourly workers in California, they cannot work overtime unless paid overtime wages. This meant that if an important witness in a case needed to be interviewed at the end of the detective’s shift, too bad. The interview would have to wait until the detective’s next regular shift. Needless to say, this is no way to run a homicide investigation,

especially in a community where witnesses tend to be reluctant informants at best. (Pp. 216–17.) Because of the overtime rule, a detective is told that he cannot attend a victim funeral, although this is critical to showing solidarity with victims. (P. 238.)

Looking beyond material resources, there is the question of how the institution recognizes different kinds of achievement: who gets promoted and to what positions? At several points, Leovy describes how detectives had to leave the work at which they were best and surely most valuable—solving homicides—to take up positions in patrol divisions in order to be promoted within the Department. According to Leovy, this is consistent with a long tradition in the LAPD of valuing uniformed patrol work over plainclothes detective work. This is a department that emphasizes crime prevention rather than crime “reaction,” as after-the-fact investigations are termed. (P. 39.)

Perhaps as a result of this relative valuation, patrol officers and detectives often find themselves at odds. Detectives become angry at patrol officers who, in responding to crime scenes, unnecessarily anger potential witnesses at the scene. (P. 69.) Leovy describes a typical LAPD response to a spike in homicides by saturating a neighborhood with patrol officers. This produces almost nothing in the way of new informants or information about past killings, likely because of the way patrol officers interact with community members. (P. 268.) Illustrating the rule by its exception, detectives are astonished when a patrol officer, on his own initiative, tracks down the detectives on a case to give them a handwritten note with a phone number on it that a witness had left at the crime scene for investigators. For some reason, the officers working the scene had never picked it up. (P. 259.)

In the end, though, whether homicide detectives in Los Angeles can do a better job than they presently do on black-on-black homicides depends on the detectives themselves. In this assessment, we begin with clearance rates—the basic statistical measure for police resolution of criminal investigations.

Leovy argues that the number of “self-solver” cases in the police department’s South Bureau—cases in which the identity of the killer is so clear that it requires almost no detective work to establish—would produce a clearance rate of 30 to 40% with only minimal additional investigation. (P. 91.) It turns out this is about the overall homicide clearance rate in Los Angeles during the time period covered (2001–2011). (P. 91.) Leovy largely follows the analysis of Detective Skaggs, who distinguishes between the detectives who are “40 percenters” and those who are truly effective. It is the difference between going through the motions and insisting on results. Detectives may assiduously document witness interviews (and attempts to interview) without ever making serious progress in solving a case. (Pp. 153–58.) Meanwhile other detectives, working with the same resources, facing the same obstacles, and handling the same kinds of cases, manage to clear 75 to 80% of their cases, and sometimes more. (Pp. 67, 89.)

The difference seems to be a combination of determination and faith: determination to get results and faith that results are possible. Leovy describes a



meeting called by supervising Detective Sal La Barbera who believed that all homicide cases could be solved. He urged his detectives to greater efforts, saying: “These guys are sitting around smoking dope with no high school education! You guys are smart people. I think you can fucking figure out what happened!” (P. 91.)

Success almost always depends on securing witness cooperation. (Pp. 74–75.) Interpersonal relations are critical to securing such cooperation, but there are clearly different ways of accomplishing this. Detective Skaggs, for example, does not threaten or bluster, but neither does he take no for an answer when he believes an individual has information critical to a case. Pursuing a witness at a residence, he bangs on the residence door or window with his metal department flashlight. “Skaggs’s manner of knocking was loud, persistent, and seemed to brook no opposition.” (P. 83.) If there was no answer, he would come back, again and again, until he got his questions answered.

Skaggs displays both willpower and creativity in interrogations. An otherwise impatient, driven man who gets right to the point in conversations, in the interrogation room Skaggs is patient and uses a circling method of conversation that subtly builds tension in those being interviewed. When he feels the time is right, Skaggs suddenly changes the tone and dynamic of the interview, often to great effect. He interviews a sixteen-year-old girl who, according to other witnesses, heard her brother confess to the murder under investigation after he got home from school. Now she hotly denies this to the police. Angry and defiant, she is determined to protect her brother. Skaggs lets her talk, not challenging her account. And then, he changes tactics. “At last he interrupted, speaking slowly, voice low. He said little. But his enunciation was deliberate, almost stately. His words marched into Angela’s chatter like soldiers in formation. ‘You and I,’ he said, ‘are going to be serious and honest.’” (P. 130.) The girl dropped her head and fell silent. When she looked up, tears streaming down her face, she told what her brother had said about the shooting. (P. 130.)

In his interrogation of Devin Davis, the turning point comes with a technique that Skaggs himself cannot explain afterwards. He suddenly clapped his hands sharply. He did this at several points in the interview to get Davis’s attention and change the atmosphere between them. It worked. Soon Davis admitted to what he had been denying. (P. 203.)

The best detectives know that a critical part of their job is to sell the law to a highly skeptical black community. (P. 83.) This they must do by word and deed, but especially by deed. Detectives must show that they stand with victims—that they care. Leovy writes of Detective Nathan Kouri intervening with a Department of Children and Family Services (DCFS) worker to prevent the breakup of a family following the murder of a thirteen-year-old boy. (Pp. 257–65.) DCFS was about to remove two siblings of the murdered boy from the care of their grandmother, not because of any allegations of abuse or neglect, but just because of the murder. (The boy was almost certainly killed by unrelated gang members.) Kouri convinced the DCFS caseworker to hold off, arguing it was essential if the police

were to keep the family's support, which support was vital to solving the boy's murder. Finally, the caseworker agreed. (Pp. 264–65.) Leovy concludes: "[Kouri's] job was to anchor the law in the suffering of real human beings, to bring it down from on high and straight into the living rooms of Watts." (P. 265.) Watts is the community in South Central where the murder occurred.

Essential to success is also the continued care and protection of cooperating witnesses. Leovy describes how Detective Skaggs relocates, stays in touch with, and periodically provides material help for Jessica Midkiff, from the time of her first interview in the case through her trial testimony years later. A teen prostitute, a stripper, and an apparently lost soul, she never changes her story from the account she originally gave Skaggs. (Pp. 176–84, 292–93.) She seems to grow up in the course of the case. In his continued relations with Midkiff, Skaggs proves to be an often mystified and sometimes frustrated but nevertheless apparently effective caseworker for a very much at risk young woman. (Pp. 224–29, 236, 313.)

Leovy uses the Tennelle case as an example of how a homicide investigation should be conducted. She argues that the murder was always solvable, with the right effort. (Pp. 306–07.) Implied is that any well trained and motivated detective—or detectives—could have gotten the same results. But Leovy's admiring portrait of Skaggs, and a few other highly effective detectives, might support a very different conclusion: that exceptional individuals get exceptional results. The analogy that comes to mind here is of success in public education. Over and again, we hear of particular teachers or principals achieving far greater success with the most challenging students than most teachers or administrators can obtain. The question becomes, why can't others do the same? This is a critical question for reform efforts. The success of any large-scale enterprise, whether public education or policing, must depend in significant measure on its ordinary contributors because, by definition, most will be ordinary, not extraordinary.<sup>11</sup>

In the context of homicide investigations (again, paralleling the education debate), the question often comes down to expectation. What do we expect of service providers? What counts as success? The realist maintains that there are serious limits on what police investigators can accomplish in neighborhoods where most distrust the police, or worse. Surely, there is truth to this. And yet, a great value of *Ghettoside* is how it demonstrates the power not of community but of *detective* attitudes. The refusal to take community suspicion of and hostility toward police as a limiting factor, but as just another challenge to a successful investigation, can dramatically increase the chances of identifying and successfully prosecuting killers. What seems to be fixed and immutable turns out to be quite

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<sup>11</sup> There is also the question of how many officers with personalities like Skaggs a police department can handle. Other officers quipped at Skaggs that, when he did not have an assigned partner, he actually had the only partner he needed: "Skaggs and His Ego." (P. 162.)

changeable on a case by case, person by person basis. Relations between departments and communities can be changed.<sup>12</sup>

#### VI. BUT WHO IS REALLY TO BLAME? THE PERSISTENT AND PERNICIOUS ATTRACTION OF GOOD GUYS VERSUS BAD GUYS THINKING

Sooner or later, in any discussion of race disparities and injustice in America, the question of group blame arises. Whether the question is spoken aloud or remains a nagging, private concern, it is there. Who is at fault, really? Who is at fault for the problems we see now? With respect to violence in the black community, who is really to blame, the community or the cops? Should the accusing finger point at dysfunctional families with missing fathers, high levels of drug use and alcoholism, a low value placed on educational achievement and a high value on violence to resolve disputes, or should blame fall primarily on a hostile, indifferent, and racist police force, reflecting broader social attitudes? These questions arise from a human need to attribute personal fault even to large groups and institutions, to blame morally and collectively.

Academics often object to this turn to group character judgment. I definitely object. The oversimplification of history, economics, social policy, morals, and much more that group blaming entails makes it unhelpful in analysis and in practice often leads to heated, personalized disputes that impede rather than further reform efforts. But simply deploring the tendency will not thwart it. At a minimum, we need to understand why the temptation to condemn groups is so strong when it comes to questions of race and violence.

The simplest of all moralities is that which divides people into the good and the bad. Good people do good things and bad people do bad things. This is the

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<sup>12</sup> See DOMANICK, *supra* note 2. The dynamic nature of police-community relations raises questions about the issue that has preoccupied many social science researchers: whether differentials in homicide clearance rates are due, in part, to police devaluation of certain victims, primarily minorities, or to lack of cooperation with police. See *supra* note 7 and accompanying text. But as in any complex and changing relationship, making judgments about who is primarily at fault is difficult and not necessarily useful when the goal is to make the relationship work. To cite one example, in a recent study comparing police departments with relatively low and high homicide clearance rates, the authors stated that the social science literature “lends support for the notion that police investigate homicides equitably.” David L. Carter & Jeremy G. Carter, *Effective Police Homicide Investigations: Evidence from Seven Cities with High Clearance Rates*, HOMICIDE STUD. 1, 2 (2015). That is, police treat all cases the same, regardless of victim status. Later in the study, the authors note a number of police practices that serve to distinguish successful departments from unsuccessful ones. Each involves community interaction. One practice is the use of a thorough neighborhood canvas following a homicide—a technique employed with good results by high clearance (successful) departments and not by low clearance (unsuccessful) departments. The latter are wont to term such canvases “a waste of time,” observing that “nobody talks to the police” and “the community does not trust us.” *Id.* at 8. Does it matter here, which comes first, the community’s negative views of police or police negative views of the community? Effective law enforcement requires a change in the relationship.

kind of moral reasoning that parents often use with small children to explain evil in the world. It is not the kind of morality that sophisticated adults will generally admit to, but it remains an instinctive, default setting for normative assessment. He's a good guy. She's good people. Or, watch out: he's bad news. Often unconsciously, distinctions of politics, class, and race provide presumptive labels for good and bad in both groups and individuals.

Police are notorious for good guys versus bad guys thinking. Indeed, it sometimes seems to go along with the badge, the handcuffs, and the gun. The occupation attracts those inclined to strong moral judgments of others. The bond between police officers contributes to a sense of them against the world. Officers need to rely on each other; indeed, it is not too much to say that their lives may depend on each other. Their work involves stresses and dangers that few outside their profession ever encounter. This can inspire the same kind of solidarity found among soldiers on the battlefield. Meanwhile, the crime-fighting mission of police encourages, if it does not demand, a high level of suspicion of others. No wonder police often tend to see themselves as the good guys going after the bad guys.

For many peace officers, dividing the world into us and them works. It motivates and it sustains. Leovy presents a positive version of it here, where the best homicide detectives see victims and victim families as good, perpetrators as bad. This drives a determination to identify, arrest, and prosecute murderers that produces impressive results.

And yet this personalized morality can be hugely problematic for police work, especially when it is racialized, as it often is, whether consciously or unconsciously. In the bad old days of the LAPD (in the 1980s and early 1990s), officers commonly wrote off large portions of the city's minority population. Patrol officers used the code of NHI in electronic messages to identify crimes against low value victims, the initials standing for No Human Involved. (P. 6.) Leovy reports that officers may still observe about a case that "[t]here are no victims here," signaling the value placed on the victim in the case. (P. 65.)<sup>13</sup>

Leovy finds a tendency to blame the black community for violence especially prevalent among first responders in South Los Angeles: patrol officers, paramedics, and frontline emergency room workers. By contrast, detectives and treating physicians who spend longer with victims and their families are more supportive of survivors. (P. 77.) Even homicide detectives struggle with racial and cultural difference, though. Detective Chris Barling: "It's either society's racism, or something is *wrong* with them—something wrong just with black people. And I don't believe that!" (P. 89.)

Good guys versus bad guys thinking can affect police expectations for investigative success, which affects chances of success. Listen to a retired New York Police Department detective recently explain the difficulties of solving

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<sup>13</sup> Leovy notes that officers call some victims righteous to distinguish them from those who are victims "only in a strict legal sense." (Pp. 65–66.)

certain murder cases: “If the people who are murdered in the cases that aren’t solved are bad guys, that means that the people who killed them are also bad guys. If you’re running with the wrong crowd—drug dealer, gangster—the likelihood of people within those circles helping to solve these cases is small.”<sup>14</sup> While a general truth is stated here, it can also be a self-fulfilling prophecy. Why conduct that second, third, or fourth interview with a reluctant witness if he or she is a bad guy? What’s the point? Bad guys don’t talk to the police (except of course when they do). Categorical moral judgments will also distort understandings of individuals. In impoverished urban minority communities, many people are involved in some form of black market activity, either occasionally or regularly. It can be difficult to avoid. Does that make them all bad guys?

There is another problem with good guys versus bad guys thinking in policing that Leovy’s book alludes to but does not directly address. What happens when the self-identified good guys are treated as bad guys by people they are supposed to help? One of my first, and frankly least successful, jobs was as a newspaper reporter covering the police in Duval County, Florida (the City of Jacksonville) in 1978–79. I did not know the South (and Jacksonville is very much the South), I did not know much about policing or criminal justice, and I was young, just a year out of college. Also, my predecessor on the police beat, a rough talking, non-filter Camel smoking, twenty year Navy vet of a reporter had helpfully (not) paved the way for my success by informing all his contacts in the Sheriff’s Office that the new guy covering them would be a kid fresh out of Harvard. At least I had my hair cut short when I started. And I was white and male.

Still, I learned a great deal in my months on the police beat. I quickly learned, to my surprise, how sensitive the police are to public criticism, whether real or perceived. I was surprised because these self-styled tough guys were engaged in an occupation where their actions would regularly upset people. Police must issue orders, make arrests, and sometimes use force, even deadly force. As the line in policing goes, if you want to be a hero, join the fire department. But of course, that’s not true. Men and women join the police, in part, to do right, to serve the community, even, yes, to be a hero.

Imagine, if you will, this worldview and its consequences for policing in a place like South Los Angeles. If you see you and your fellow officers as the good guys going after the bad, it is a shock to discover that some of the people you are trying to protect treat you with hostility and trepidation. If you discover that they will not talk to you, that they will sometimes work against you in solving crimes, it is hard not to take that personally and deem them at least fellow travelers with the bad guys, deserving what they get. Leovy describes how the best homicide detectives in South Los Angeles develop thick skins. They ignore even the most heated accusations of racism, confident that their actions will eventually prove

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<sup>14</sup> *Tale of Two Cities*, *supra* note 7 (quoting Joseph Giacalone, retired New York homicide detective and former director of the NYPD’s homicide school).

their commitment to victims. Many officers, however, lack the insight, the self-confidence, and the opportunity to work with the same people over time to do the same. For them, accusations of racism feel like direct attacks on their character. They cause hurt and anger and suspicion. Public accusations of bigotry are meant to and do cause shame, which directly threatens personal worth and identity. To fend off this threat, police must mount their own moral defenses, many of which they know they must keep to themselves because voicing them openly will just bring additional, unjustified, grief. Can't trust any of those people. Look at what they do when we try to help. Oh, the stories I could tell you. Don't put the problems in this place down on us. That's on them.

This is just another way that good guys versus bad guys thinking proves unhelpful in policing.

#### VII. A DANGEROUS ARGUMENT?

Academics naturally shun simplistic categories like good guys and bad guys. We are all about nuance. We complicate. And yet we remain human, subject to our own community's expectations. Contemporary scholars know perfectly well that certain kinds of research and writing, if done well, will win ready praise and recognition from fellow academics, while others, no matter how well done, will be less fruitful in terms of career advancement or the admiration of peers. Surely, this affects what issues academics take up. At several points, Leovy asks sharp questions about the choices that experts in criminal justice make about what to study. Why is there so much written about problems with eyewitness identifications and so little about the vulnerability of mostly minority witnesses who face violent retaliation for testifying?<sup>15</sup> Why is there, relatively speaking, so little attention to the problems caused by the lack of law enforcement in minority communities? There are important exceptions to the latter generalization. In legal academics, Leovy cites Randall Kennedy (Pp. 11–12.) and William Stuntz (Pp. 318–19.) as among those who have taken seriously the shortcomings of the law with respect to violence against African Americans.<sup>16</sup> Yet compared to the

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<sup>15</sup> As Leovy puts it, in contrast to the many calls for legal reforms concerning eyewitness identifications, there are “far fewer calls to better protect the mostly poor, frightened, and highly vulnerable people upon whose shoulders the state laid the burden of testifying.” (P. 79.)

<sup>16</sup> RANDALL KENNEDY, *RACE, CRIME, AND THE LAW* (1998); WILLIAM J. STUNTZ, *THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE*, 287–89 (2011) (advocating a change in the overall ratio of police officers to prisoners because community law and order depends more on effective policing than on severity of punishment following conviction). *See also* ALEXANDRA NATAPOFF, *SNITCHING: CRIMINAL INFORMANTS AND THE EROSION OF AMERICAN JUSTICE* 207–08 (2009) (arguing that police use of informants leads to serious under enforcement in minority communities, as informants are effectively given immunity for their crimes). For a recent historical account emphasizing the efforts of some black leaders in the 1970s to secure more vigorous law enforcement in black communities, see MICHAEL JAVEN FORTNER, *BLACK SILENT MAJORITY: THE ROCKEFELLER DRUG LAWS AND THE*

significance of the problem, there is not much academic attention paid to black-on-black homicide. For a contrast, see other instances of failures to investigate and prosecute that have drawn a great deal of academic research and writing in recent years, such as rape and domestic violence.<sup>17</sup>

Leovy suggests some reasons for the lack of expert engagement with black homicide. She writes that the basic facts of disproportionate violence among African Americans provoke shame. (P. 11.) Such talk can also be dangerous. Every minority group, by virtue of being a minority, distinguishes between matters that can be candidly discussed with anyone and those that should be bruited only within the group for fear that the discussion will be turned against the group. In the United States, calling attention to black homicide has the potential to encourage and deepen anti-black prejudices. (P. 11.) It may provoke cultural and policy changes that will make an awful situation worse. The history of race discrimination in America is packed with episodes in which the deployment of state power in minority communities, purportedly for the benefit of that community, has wreaked havoc. There is material in *Ghettoside* to illustrate this, in the tendency of some police in high crime minority neighborhoods to respond to high levels of violence by devaluing crimes against minority males.

The great storm cloud that looms over the discussion that Leovy hopes to provoke is the recent history of mass incarceration in the United States. The enormous increase in punishment for crime that began in earnest in the 1970s and continued into the new century has sent more people of color to prison for longer terms. The war on drugs initially fueled much of this increase.<sup>18</sup> Fear of violent crime also provoked large increases in sentences for homicide and other violent crimes and sometimes, as in California's Three Strikes law, increases in penalties for repeat offenders whose new offense was nonviolent.<sup>19</sup> Fear of youthful

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POLITICS OF PUNISHMENT (2015). For a recent social science study pointing to evidence of victim devaluation in homicide investigations, see Lee, *supra* note 7.

<sup>17</sup> On the failure to enforce the rape prohibition in a number of different contexts, see, for example, Cassia Spohn & Katharine Tellis, *Justice Denied?: The Exceptional Clearance of Rape Cases in Los Angeles*, 74 ALB. L. REV. 1379 (2011); Mary Sigler, *By the Light of Virtue: Prison Rape and the Corruption of Character*, 91 IOWA L. REV. 561 (2006); SUSAN ESTRICH, *REAL RAPE* (1987). On domestic violence, there is a large literature about under enforcement and discussion of the best ways for police and prosecutors to handle domestic violence cases. See, e.g., Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550 (1999); Jo Dixon, *The Nexus of Sex, Spousal Violence, and the State*, 29 L. & SOC'Y. REV. 359 (1995) (book review); LAWRENCE W. SHERMAN, *POLICING DOMESTIC VIOLENCE: EXPERIMENTS AND DILEMMAS* (1992). See also Stephen J. Schulhofer, *The Feminist Challenge in Criminal Law*, 134 U. PA. L. REV. 2151, 2160–94 (1994).

<sup>18</sup> See MICHAEL TONRY, *MALIGN NEGLECT: RACE, CRIME, AND PUNISHMENT IN AMERICA* (1996). See also FORTNER, *supra* note 16; MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010).

<sup>19</sup> See FRANKLIN E. ZIMRING, GORDON HAWKINS & SAM KAMIN, *PUNISHMENT AND DEMOCRACY: THREE STRIKES AND YOU'RE OUT IN CALIFORNIA* (2003). See also, JOE DOMANICK,

offenders, mostly young men of color, led to much harsher treatment of juvenile offenders.<sup>20</sup> All of these developments had a disproportionate effect on minorities, particularly on young African American males.<sup>21</sup>

Then we have the headline controversies of recent years involving charges of race discrimination by police across the United States. In New York City, the recent mayor's race involved significant discussions of race discrimination in the use of stop and frisk procedures by police.<sup>22</sup> Aggressive enforcement of minor offenses under the broken windows philosophy of crime control remains a hot topic in the nation's largest city.<sup>23</sup> And of course, allegations of unjustified use of deadly force against young men of color, especially young black men, have led to extraordinary protests across the country. It is not hard to imagine a skeptic saying the following (or worse): You want more law enforcement—more police and more intensive policing—to help the ever-embattled black community in urban America and especially its young black men? ARE YOU KIDDING?<sup>24</sup>

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CRUEL JUSTICE: THREE STRIKES AND THE POLITICS OF CRIMINAL JUSTICE IN AMERICA'S GOLDEN STATE (2005).

<sup>20</sup> On the increase in juvenile punishments, see HUMAN RIGHTS WATCH, "WHEN I DIE THEY'LL SEND ME HOME": YOUTH SENTENCED TO LIFE IN PRISON WITHOUT PAROLE IN CALIFORNIA (2008) [hereinafter HUMAN RIGHTS WATCH, WHEN I DIE]; HUMAN RIGHTS WATCH, "WHEN I DIE...THEY'LL SEND ME HOME": YOUTH SENTENCED TO LIFE WITHOUT PAROLE IN CALIFORNIA, AN UPDATE (2012).

<sup>21</sup> For race disparities in California's Three Strikes law, see BRIAN BROWN & GREG JOLIVETTE, LEGISLATIVE ANALYST'S OFFICE, A PRIMER: THREE STRIKES—THE IMPACT AFTER MORE THAN A DECADE (2005). For race disparities in juvenile punishment, see OUR CHILDREN, THEIR CHILDREN: CONFRONTING RACIAL AND ETHNIC DIFFERENCES IN AMERICAN JUVENILE JUSTICE (Darnell F. Hawkins & Kimberly Kempf-Leonard eds., 2005); HUMAN RIGHTS WATCH, WHEN I DIE, *supra* note 20, at 24–29. On race disparity and discrimination in contemporary American punishment generally, see BRUCE WESTERN, PUNISHMENT AND INEQUALITY IN AMERICA (2007); MARC MAUER, RACE TO INCARCERATE (1999). See also NAT'L RESEARCH COUNCIL, THE GROWTH OF INCARCERATION IN THE UNITED STATES (Jeremy Travis, Bruce Western & Steve Redburn eds., 2014). For an analysis of the politics behind mass incarceration, including but not limited to race issues, see MARIE GOTTSCHALK, CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS (2015).

<sup>22</sup> See, e.g., Adam Gabbatt, *Bill de Blasio Wins by a Landslide to Become the New York City Mayor*, THE GUARDIAN (Nov. 6, 2013), <http://www.theguardian.com/world/2013/nov/06/bill-de-blasio-wins-new-york-mayoral-election>; *Where the Mayoral Candidates Stand on Key Issues*, N.Y. TIMES (Oct. 29, 2013), [http://www.nytimes.com/interactive/2013/08/27/nyregion/where-the-mayoral-candidates-stand-on-key-issues.html?\\_r=0](http://www.nytimes.com/interactive/2013/08/27/nyregion/where-the-mayoral-candidates-stand-on-key-issues.html?_r=0).

<sup>23</sup> See Ken Auletta, *Fixing Broken Windows*, THE NEW YORKER, Sept. 7, 2015, at 38.

<sup>24</sup> Emphasizing the connection between a history of racism and contemporary patterns of violence, Ta-Nehisi Coates writes that arguments about black-on-black violence distract from race history and larger race realities: "• Black-on-black crime' is jargon, violence to the language" which hides its historic roots in American racism, he says. "To yell 'black-on-black crime' is to shoot a man and then shame him for bleeding." TA-NEHISI COATES, BETWEEN THE WORLD AND ME 110–11 (2015). Indicating the difficulty of discussing black-on-black crime today, author Michael Javen Fortner, responding to a recent critical *New York Times* review by Khalil Gibran Muhammad of Fortner's new book, *Silent Black Majority* wrote: "Most troubling is the extent to which



And yet the disproportionate violence that occurs between black men remains among the most important, durable, and distinctive features of American criminal justice—right up there with the severity of contemporary punishment, prevalence of gun ownership, and national legacies of conquest, slavery, segregation, and mass immigration.<sup>25</sup> None of these can be ignored in any serious discussion of American criminal justice.

It matters what academics choose to think and talk and write about and what we do not. Our choice of issues helps set the public agenda in criminal justice. Without sustained academic attention to mass incarceration, I doubt whether the present movement to reconsider punishment policy in America would have the momentum that it does today. The same can be said for a variety of criminal law reforms in late twentieth century, especially those urged by feminist researchers and writers. As academics, we can and should be held accountable for our differential interests—just as police are. With this in mind, I urge here serious academic and other attention to the modest but important argument about race and homicide investigations that *Ghettoside* makes.

The policy message that we might take from this book and from recent social science research on homicide investigation is simple. I would sum it up as follows: The investigation of homicides involving young black males should receive a higher priority than it currently does. Leovy restricts her argument to the City of Los Angeles, but statistics suggest that similar—or greater—remedial action is needed in many big city police departments across the nation.<sup>26</sup> Homicide units need to be better staffed. The ability to respond to a homicide rapidly, with well-trained and well-equipped investigators, with competent support staff, in the first 48 hours following the crime's discovery can make a major difference to the chances of resolving the case and resolving it quickly. Assigning three or four detectives to a case instead of one or two, which is standard today for urban homicides, would help.<sup>27</sup> Investigators need basic material support with tools like

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Muhammad's review is representative of a broader discourse that seeks to shame those who are concerned about black-on-black crime. It's possible to recognize the devastating effects of black-on-black crime and at the same time support criminal justice reform. That's my position." Michael J. Fortner, Letter to the Editor, *Black Silent Majority*, N.Y. TIMES, Oct. 4, 2015, at 6.

<sup>25</sup> On severity of punishment, see JAMES Q. WHITMAN, *HARSH JUSTICE: CRIMINAL PUNISHMENT AND THE WIDENING DIVIDE BETWEEN AMERICA AND EUROPE* (2003). On the relation between American crime and guns, see FRANKLIN E. ZIMRING & GORDON HAWKINS, *CRIME IS NOT THE PROBLEM: LETHAL VIOLENCE IN AMERICA* (1997).

<sup>26</sup> For evidence of large variations in clearance rates between large American cities, see WELLFORD & CRONIN, *supra* note 7; Carter & Carter, *supra* note 12. Variations can be significant within metropolitan areas as well. See Lee, *supra* note 7 at 531 (noting that the LAPD, which has jurisdiction over the City of Los Angeles, clears more homicide cases and does so faster than the Los Angeles Sheriff's Department (LASD), which has jurisdiction over unincorporated parts of the county and smaller cities that contract with LASD).

<sup>27</sup> See WELLFORD & CRONIN, *supra* note 7.

take-home cars, recording equipment, and computers.<sup>28</sup> Police department resources need to be increased or redistributed so that detectives are well-trained and well compensated, with overtime pay available for investigations in their early phases and any critical times in the case. Detectives should have an avenue of promotion through the detective ranks rather than be required to leave their area of expertise to gain higher rank and pay. In general, departmental assignments should respect the extraordinary human resource that is a skilled and dedicated homicide investigator. Detective reassignments to meet the public safety anxiety of the month—or year—need to be resisted. Homicides should have top priority for police resources. Patrol officers need better training and supervision to assist detectives in the early investigation of minority victim homicides. The false opposition of preventive versus reactive policing needs to be rejected. One is not superior to the other, even with respect to reducing future levels of criminal violence.

None of this should be controversial. Properly understood, I do not think these are dangerous arguments likely to repeat recent race history. They rely on two simple propositions: (1) that solving black-on-black homicides should be one of the highest priorities of law enforcement today because these are some of the most serious of all crimes, with long-term, devastating consequences for the communities in which they occur; and (2) homicide clearance rates for these offenses can be improved with modest increases in material resources and better development, recognition, and coordination of human talent.

Note the limits of these prescriptions. Nothing here requires a fundamental rethinking of policing or police-community relations, nor changes in police use of force policy, or searches and seizures. These may be justified on other grounds, but they are not implicated here. Nor does the effort to increase investigative effectiveness require any increase in punishment. Actually, from a public safety perspective, it is possible that higher clearance rates for homicide will pair with an overall decrease in sentence length. This is what the late Bill Stuntz argued for.<sup>29</sup> Increasing the chance that a perpetrator is arrested will have a greater deterrent effect than increasing penalties, which only apply to those who are arrested, prosecuted, and convicted. Given the modesty of these prescriptions, a failure to adopt them or something similar will make clear what many say is patently obvious today: that the lives of young black men still do not matter as much as others do to the state and to the public.

Good detective work is often slow, grinding, and undramatic. It requires great persistence by individuals who risk their souls by intimate dealings with the worst that humans do. It is enormously valuable work, however.

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<sup>28</sup> For examples of homicide units that do not provide detectives with basic equipment, even rubber gloves for evidence collection, see Carter & Carter, *supra* note 12, at 14.

<sup>29</sup> See STUNTZ, *supra* note 16.

In the fictional accounts of murder that fill our screens, large and small, and the pages of best-selling novels, homicide detectives carry the moral weight of the community on their shoulders. They function as secular saviors of a fallen world. Which raises a simple question: Why can't real world detectives working the streets of South Los Angeles be valued as much as those playing them in Hollywood? Why can't real investigators have something like the resources and support of their counterparts on TV?

Leovy suggests an answer, and I think she is right. It is all about the victim. Some homicides provoke a large police response because the victims are highly valued by society at large. The case must be solved. Just trying is not enough. The killing of others, especially of young males of color, especially if they might have been involved in some illegality or wrongdoing, do not provoke the same outrage or need for resolution. Resources for their cases remain modest.

The distinction is not all about race. The main case portrayed in *Ghettoside*, the murder of Bryant Tennelle, shows this. But race is still a large part of the story. Equal valuation of victims, regardless of race or gender or neighborhood, is still a critical missing element in efforts to achieve equal justice in America.

#### VIII. CONCLUSION

There are not many books that even on re-reading make me want to scream or cry. But this one did. Both actually, scream and cry. As an Angelino, I wanted to scream when I read that our police department could not manage to provide some of its most overworked, most skilled, and most important investigators with vital equipment from cars to computers to tape recorders. Here are officers who have double or triple the case loads of detectives working in more affluent areas of the city, but who could not take department cars home the way detectives at headquarters could. This was a department that lacked cars with tinted windows to transport witnesses without being observed, yet had its own fleet of helicopters. (P. 68.)

I also found myself surprisingly affected by Leovy's accounts of the grief of homicide's survivors. Consider Wally Tennelle, who after the jury convicted the second of two men for the murder of his son, waited until the courtroom emptied to let tears flow down his face. Then he gathered himself, took the elevator down, and returned to his work as a detective himself, once more the consummate professional. (P. 309.)

Frankly, I am not optimistic that the message of this book will be heard by those who need to hear it. Its argument threatens contemporary cultural and political differences on race and criminal justice and what wins attention today is mostly what deepens those divides. It is also true that as a people, we seem more engaged by rage than sorrow and this is ultimately a work of tears. As *Ghettoside* reminds, homicide leaves in its wake a deep, deep sadness, but few have the strength, will, or courage to deal with that, if not forced to by events.

And yet there is cause for hope here. For all its well-documented faults, the LAPD of today is not the often brutal and racist force it was a generation ago.<sup>30</sup> The detectives depicted here take black-on-black homicide very seriously. Leovy, a white journalist does as well. So do other white Americans. The white foreman of the jury that convicted Derrick Starks said after the trial: “There is a perception that blacks are doing it to blacks, and if I’m white, it doesn’t affect me. Well, get over it. *It does.*” (Pp. 305–06.)

A recent photograph and story in the *Los Angeles Times* captured for me where we are today in Los Angeles on matters of race, homicide, and justice, for both good and bad. On page five of the California (local news) section on August 27, 2015, a photograph showed two women speaking across a fence, yellow police tape in the foreground marking the boundary of a crime scene.<sup>31</sup> On the left is the sister of a murder victim, her face twisted in grief. To the right, an LAPD sergeant has reached over the fence to hold her hand, seeking to comfort her. Both are young women. Both are African American. It would be hard to imagine this scene in Los Angeles twenty years ago. That’s the good: a showing of police concern, which as Leovy accounts in her book, is critical to doing justice.

As for the bad, below the photo appeared the story of the murder that prompted this scene of grief. Two men were shot to death the day before on a South Los Angeles street. The paper gave the double homicide a total of six single sentence paragraphs.<sup>32</sup> The story appeared in a compendium of short news items that included the death of a whale in an Oakland waterway, the theft of a gun from a police officer’s car in Oakland, and a mountain lion’s attack on a poodle in a Burbank backyard.<sup>33</sup>

If the police can be faulted for not caring enough about black victims of homicide—and sometimes they can—they hardly stand alone in their indifference. The truth is that the general public and the media, on most days at least, care even less.

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<sup>30</sup> See REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT (1991); FIVE YEARS LATER: A REPORT TO THE LOS ANGELES POLICE COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT’S IMPLEMENTATION OF INDEPENDENT COMMISSION RECOMMENDATIONS (1996); BLUE RIBBON RAMPART REVIEW PANEL, RAMPART RECONSIDERED: THE SEARCH FOR REAL REFORM SEVEN YEARS LATER (2006); DOMANICK, *supra* note 2.

<sup>31</sup> *California Briefing*, L.A. TIMES, Aug. 27, 2015, at B5.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*